

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION SEVEN**

FCA US LLC d/b/a STELLANTIS US LLC

Respondent

and

**LOCAL 1264, INTERNATIONAL UNION,
UNITED AUTOMOBILE, AEROSPACE AND
AGRICULTURAL IMPLEMENT WORKERS OF
AMERICA (UAW), AFL-CIO**

**Cases 07-CA-281249
07-CA-286083
07-CA-290985**

Charging Party

**ORDER FURTHER CONSOLIDATING CASES, SECOND CONSOLIDATED
COMPLAINT, AND NOTICE OF HEARING**

On July 28, 2022, a Consolidated Complaint and Notice of Hearing issued in Cases 07-CA-281249 and 07-CA-290985 alleging that Respondent has engaged in unfair labor practices that violate the National Labor Relations Act (the Act), 29 U.S.C. § 151 et seq. Pursuant to Section 102.33 of the Rules and Regulations of the National Labor Relations Board (the Board), and to avoid unnecessary costs or delay, **IT IS ORDERED THAT** those cases are further consolidated with Case 07-CA-286083, filed by the Charging Party, which alleges that Respondent has engaged in further unfair labor practices within the meaning of the Act.

This Second Consolidated Complaint and Notice of Hearing, issued pursuant to Section 10(b) of the Act and Section 102.15 of the Board's Rules and Regulations, is based on these consolidated cases and alleges that Respondent has violated the Act as described below.

1. (a) The charge in Case 07-CA-281249 was filed by the Charging Party on August 11, 2021, and a copy was served on Respondent by U.S. mail on August 13, 2021.

(b) The charge in Case 07-CA-286083 was filed by the Charging Party on November 10, 2021, and a copy was served on Respondent by U.S. mail on November 12, 2021.

(c) The charge in Case 07-CA-290985 was filed by the Charging Party on February 18, 2022, and a copy was served on Respondent by U.S. mail on February 23, 2022.
2. (a) At all material times, Respondent, a limited liability company, with an office and place of business in Sterling Heights, Michigan (Sterling Stamping Plant), has been

engaged in the manufacture, nonretail sale, and distribution of automobiles and automotive products.

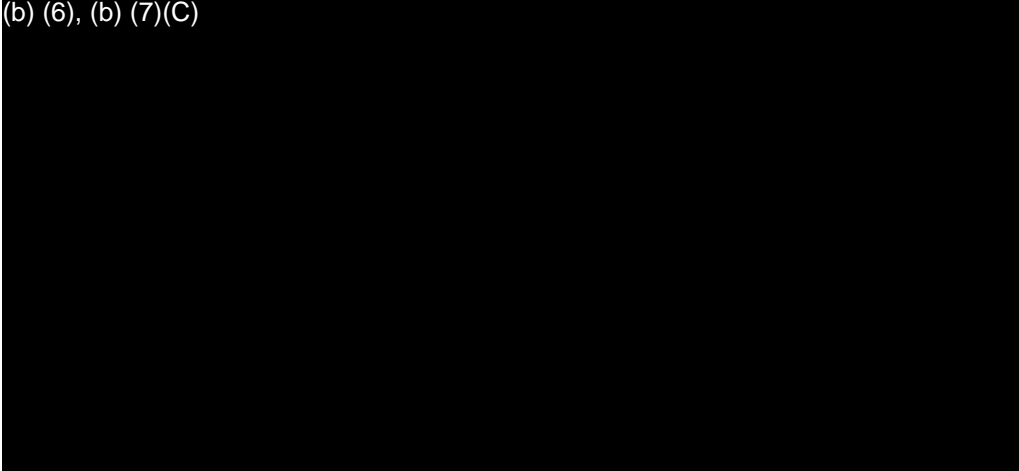
(b) During the 12-month period ending January 16, 2022, Respondent purchased and received at its Sterling Stamping Plant goods valued in excess of \$50,000 directly from points outside the State of Michigan.

(c) At all material times, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

3. At all material times, the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL-CIO (International Union), and the Charging Party have each been a labor organization within the meaning of Section 2(5) of the Act.

4. At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondent within the meaning of Section 2(11) of the Act and agents of Respondent within the meaning of Section 2(13) of the Act:

(b) (6), (b) (7)(C)



5. (a) The following employees of Respondent (the Unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All production and maintenance employees employed at the Sterling Stamping Plant; but excluding all supervisory employees with authority to hire, promote, discharge, discipline or otherwise effect changes in the status of employees or effectively recommend such action, and confidential clerical employees.

(b) Since about January 16, 2021, Respondent has recognized the International Union as the exclusive collective-bargaining representative of the Unit. This

recognition is embodied in Respondent's assumption of the collective-bargaining agreement, effective from December 16, 2019 through December 16, 2023.

(c) Since about January 16, 2021, based on the facts described above in paragraphs 2 and 5(b), the International Union has been the designated exclusive collective-bargaining representative of the Unit.

(d) From about 2019 to January 16, 2021, based on Section 9(a) of the Act, the International Union has been the exclusive collective-bargaining representative of the Unit employed by FCA US, LLC.

(e) At all times since about January 16, 2021, based on Section 9(a) of the Act, the International Union has been the exclusive collective-bargaining representative of Respondent's employees in the Unit.

(f) Since about January 16, 2021, the Charging Party has been the designated servicing representative of the International Union for employees in the Unit.

6. (a) Since about June 24, 2021, the Charging Party has requested, by e-mail, that Respondent furnish the Charging Party with the following information:

- (1) Within the preceding 6 months provide copies of all SOP's that were changed and provide an explanation on what the changes were.
- (2) Within the preceding 6 months provide the lines and the part numbers that you unilaterally removed the manpower from and provide an explanation on why the manpower was unilaterally removed.

(b) Since about July 21, 2021, the Charging Party has requested, by e-mail, that Respondent furnish the Charging Party with the following information:

- (1) Provide the names of the team members that you gave instruction to today or previously that they could not sit down unless it's break time.
- (2) Provide that race of the team members that you told today or previously that they could not sit down unless it's break time.
- (3) Provide that classification of the hourly employees that you instructed that they could not sit down unless it's break time.
- (4) Provide the names of all employees that you told today that they would be written up if they are caught sitting.

- (5) Provide copies of all email communications that operating management has had with Dominic Constantini regarding this no sitting policy.

(c) Since about August 10, 2021, the Charging Party has requested, by e-mail, that Respondent furnish the Charging Party with the following information:

- (1) Provide a copy of labor relations' full investigation into the matter involving (b) (6), (b) (7)(C) discipline.
- (2) Provide a copy of (b) (6), (b) (7)(C) statement to labor relations.
- (3) Provide copies of all documents utilized in determining that (b) (6), (b) (7)(C) should get (b) (6), (b) (7)(C) off.
- (4) Provide the reasons (b) (6), (b) (7)(C) requested (b) (6), (b) (7)(C) on (b) (6), (b) (7)(C).
- (5) Provide a copy of the (b) (6), (b) (7)(C) that was entered for (b) (6), (b) (7)(C) on (b) (6), (b) (7)(C).

7. The information requested by the Charging Party, as described above in paragraph 6, is necessary for, and relevant to, the Charging Party's performance of its duties as the designated servicing representative of the exclusive collective-bargaining representative of the Unit.

8. (a) From about June 24, 2021, to about September 20, 2021, Respondent unreasonably delayed in furnishing the Charging Party with the information requested by it as described above in paragraph 6(a).

(b) From about August 10, 2021, to about November 9, 2021, Respondent unreasonably delayed in furnishing the Charging Party with the information requested by it as described above in paragraph 6(c).

9. Since about July 21, 2021, Respondent has failed and refused to furnish the Charging Party with the information requested by it and/or failed to respond to the Charging Party about the information requested by it, as described above in paragraph 6(b).

10. (a) About August 11, 2021, Respondent notified the Charging Party that it was changing the designation and rotation of line inspectors, specifically to Line 3 and Line 5, from one Line Inspector designated for each line, to one Line Inspector rotating between the two lines.

(b) On about August 11, 2021, the Charging Party requested that Respondent bargain collectively about the change in designation and rotation of line inspectors.

(c) Since about August 11, 2021, Respondent has failed and refused to bargain collectively about the subject set forth above in paragraph 10(a).

(d) The subject set forth in paragraph 10(a) relates to the wages, hours, and other terms and conditions of employment of the Unit and is a mandatory subject for the purposes of collective bargaining.

11. (a) About January 15, 2022, Respondent notified the Charging Party that it was changing the designation of team leaders, specifically to Line 5 and Line 7, from one Team Leader designated for each line, to one Team Leader rotating between the two lines.

(b) About February 2, 2022, the Charging Party requested that Respondent bargain collectively about the change in designation of team leaders.

(c) Since about February 2, 2022, Respondent has failed and refused to bargain collectively about the subject set forth above in paragraph 11(a).

(d) The subject set forth above in paragraph 11(a) relates to wages, hours, and other terms and conditions of employment of the Unit and is a mandatory subject for the purposes of collective bargaining.

12. (a) About January 27, 2022, Respondent notified the Charging Party that it was changing the designation and rotation of line inspectors, specifically to Line 3, Line 5, and Line 7, from one Line Inspector designated for each line, to one Line Inspector rotating between the three lines.

(b) On about January 28, 2022, the Charging Party requested that Respondent bargain collectively about the change in designation and rotation of line inspectors.

(c) Since about January 28, 2022, Respondent has failed and refused to bargain collectively about the subject set forth above in paragraph 12(a).

(d) The subject set forth in paragraph 12(a) relates to the wages, hours, and other terms and conditions of employment of the Unit and is a mandatory subject for the purposes of collective bargaining.

13. (a) On or about August 12, 2021, Respondent implemented the change outlined in paragraph 10(a).

(b) On or about February 28, 2022, Respondent implemented the change outlined in paragraph 11(a).

(c) On or about February 7, 2022, Respondent implemented the change outlined in paragraph 12(a).

14. Respondent engaged in the conduct described above in paragraph 13 without affording the Charging Party a meaningful opportunity to bargain with Respondent with respect to this conduct and the effects of this conduct.

15. By the conduct described above in paragraphs 8, 9, 10(c), 11(c), 12(c), 13, and 14, Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(1) and (5) of the Act.

16. The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

WHEREFORE, it is prayed that Respondent be ordered to:

1. Cease and desist from:

(a) engaging in the conduct described above in paragraphs 8, 9, 10(c), 11(c), 12(c), 13, 14, and 15, or in any like or related manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act; and

(b) engaging in the conduct described in paragraphs 8, 9, 10(c), 11(c), 12(c), 13, 14 and 15, or in any like or related manner failing and refusing to bargain collectively and in good faith with the International Union, and the Charging Party as the designated servicing representative of the exclusive bargaining representative of the Unit.

2. Take the following affirmative action:

(a) Provide the Charging Party with the information requested in paragraph 6(b).

(b) Rescind all changes in employment conditions as set forth in paragraphs 10(a), 11(a), and 12(a).

(c) Upon request, bargain collectively and in good faith with the Charging Party as the designated servicing representative of the International Union, and the International Union as the Unit's exclusive collective-bargaining representative with respect to wages, hours, and other terms and conditions of employment.

(c) Post appropriate notices.

The General Counsel further prays for such other relief as may be just and proper to remedy the unfair labor practices herein alleged.

ANSWER REQUIREMENT

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the second consolidated complaint. The answer must be **received by this office on or before September 6, 2022 or postmarked on or before September 5, 2022.** Respondent also must serve a copy of the answer on each of the other parties.

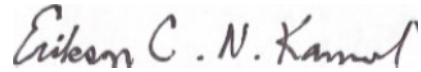
The answer must be filed electronically through the Agency's website. To file electronically, go to www.nlr.gov, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. Responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature continue to be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing. Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed, or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the second consolidated complaint are true.

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT on **September 28, 2022**, at 10:00 a.m. via ZOOM Videoconference, and on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony

regarding the allegations in this second consolidated complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

Dated: August 22, 2022



Erikson C.N. Karmol, Acting Regional Director
National Labor Relations Board, Region 07
Patrick V. McNamara Federal Building
477 Michigan Avenue, Room 05-200
Detroit, MI 48226

Attachments

Procedures in NLRB Unfair Labor Practice Hearings

The attached complaint has scheduled a hearing that will be conducted by an administrative law judge (ALJ) of the National Labor Relations Board who will be an independent, impartial finder of facts and applicable law. **You may be represented at this hearing by an attorney or other representative.** If you are not currently represented by an attorney, and wish to have one represent you at the hearing, you should make such arrangements as soon as possible. A more complete description of the hearing process and the ALJ's role may be found at Sections 102.34, 102.35, and 102.45 of the Board's Rules and Regulations. The Board's Rules and regulations are available at the following link: www.nlr.gov/sites/default/files/attachments/basic-page/node-1717/rules_and_regs_part_102.pdf.

The NLRB allows you to file certain documents electronically and you are encouraged to do so because it ensures that your government resources are used efficiently. To e-file go to the NLRB's website at www.nlr.gov, click on "e-file documents," enter the 10-digit case number on the complaint (the first number if there is more than one), and follow the prompts. You will receive a confirmation number and an e-mail notification that the documents were successfully filed.

Although this matter is set for trial, this does not mean that this matter cannot be resolved through a settlement agreement. The NLRB recognizes that adjustments or settlements consistent with the policies of the National Labor Relations Act reduce government expenditures and promote amity in labor relations and encourages the parties to engage in settlement efforts.

I. BEFORE THE HEARING

The rules pertaining to the Board's pre-hearing procedures, including rules concerning filing an answer, requesting a postponement, filing other motions, and obtaining subpoenas to compel the attendance of witnesses and production of documents from other parties, may be found at Sections 102.20 through 102.32 of the Board's Rules and Regulations. In addition, you should be aware of the following:

- **Special Needs:** If you or any of the witnesses you wish to have testify at the hearing have special needs and require auxiliary aids to participate in the hearing, you should notify the Regional Director as soon as possible and request the necessary assistance. Assistance will be provided to persons who have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.603.
- **Pre-hearing Conference:** One or more weeks before the hearing, the ALJ may conduct a telephonic prehearing conference with the parties. During the conference, the ALJ will explore whether the case may be settled, discuss the issues to be litigated and any logistical issues related to the hearing, and attempt to resolve or narrow outstanding issues, such as disputes relating to subpoenaed witnesses and documents. This conference is usually not recorded, but during the hearing the ALJ or the parties sometimes refer to discussions at the pre-hearing conference. You do not have to wait until the prehearing conference to meet with the other parties to discuss settling this case or any other issues.

II. DURING THE HEARING

The rules pertaining to the Board's hearing procedures are found at Sections 102.34 through 102.43 of the Board's Rules and Regulations. Please note in particular the following:

- **Witnesses and Evidence:** At the hearing, you will have the right to call, examine, and cross-examine witnesses and to introduce into the record documents and other evidence.
- **Exhibits:** Each exhibit offered in evidence must be provided in duplicate to the court reporter and a copy of each of each exhibit should be supplied to the ALJ and each party when the exhibit is offered

in evidence. If a copy of any exhibit is not available when the original is received, it will be the responsibility of the party offering such exhibit to submit the copy to the ALJ before the close of hearing. If a copy is not submitted, and the filing has not been waived by the ALJ, any ruling receiving the exhibit may be rescinded and the exhibit rejected.

- **Transcripts:** An official court reporter will make the only official transcript of the proceedings, and all citations in briefs and arguments must refer to the official record. The Board will not certify any transcript other than the official transcript for use in any court litigation. Proposed corrections of the transcript should be submitted, either by way of stipulation or motion, to the ALJ for approval. Everything said at the hearing while the hearing is in session will be recorded by the official reporter unless the ALJ specifically directs off-the-record discussion. If any party wishes to make off-the-record statements, a request to go off the record should be directed to the ALJ.
- **Oral Argument:** You are entitled, on request, to a reasonable period of time at the close of the hearing for oral argument, which shall be included in the transcript of the hearing. Alternatively, the ALJ may ask for oral argument if, at the close of the hearing, if it is believed that such argument would be beneficial to the understanding of the contentions of the parties and the factual issues involved.
- **Date for Filing Post-Hearing Brief:** Before the hearing closes, you may request to file a written brief or proposed findings and conclusions, or both, with the ALJ. The ALJ has the discretion to grant this request and to will set a deadline for filing, up to 35 days.

III. AFTER THE HEARING

The Rules pertaining to filing post-hearing briefs and the procedures after the ALJ issues a decision are found at Sections 102.42 through 102.48 of the Board's Rules and Regulations. Please note in particular the following:

- **Extension of Time for Filing Brief with the ALJ:** If you need an extension of time to file a post-hearing brief, you must follow Section 102.42 of the Board's Rules and Regulations, which requires you to file a request with the appropriate chief or associate chief administrative law judge, depending on where the trial occurred. You must immediately serve a copy of any request for an extension of time on all other parties and furnish proof of that service with your request. You are encouraged to seek the agreement of the other parties and state their positions in your request.
- **ALJ's Decision:** In due course, the ALJ will prepare and file with the Board a decision in this matter. Upon receipt of this decision, the Board will enter an order transferring the case to the Board and specifying when exceptions are due to the ALJ's decision. The Board will serve copies of that order and the ALJ's decision on all parties.
- **Exceptions to the ALJ's Decision:** The procedure to be followed with respect to appealing all or any part of the ALJ's decision (by filing exceptions with the Board), submitting briefs, requests for oral argument before the Board, and related matters is set forth in the Board's Rules and Regulations, particularly in Section 102.46 and following sections. A summary of the more pertinent of these provisions will be provided to the parties with the order transferring the matter to the Board.

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
NOTICE

Case 07-CA-281249 et al.

The issuance of the notice of formal hearing in this case does not mean that the matter cannot be disposed of by agreement of the parties. On the contrary, it is the policy of this office to encourage voluntary adjustments. The examiner or attorney assigned to the case will be pleased to receive and to act promptly upon your suggestions or comments to this end.

An agreement between the parties, approved by the Regional Director, would serve to cancel the hearing. However, unless otherwise specifically ordered, the hearing will be held at the date, hour, and place indicated. Postponements ***will not be granted*** unless good and sufficient grounds are shown ***and*** the following requirements are met:

- (1) The request must be in writing. An original and two copies must be filed with the Regional Director when appropriate under 29 CFR 102.16(a) or with the Division of Judges when appropriate under 29 CFR 102.16(b).
- (2) Grounds must be set forth in ***detail***;
- (3) Alternative dates for any rescheduled hearing must be given;
- (4) The positions of all other parties must be ascertained in advance by the requesting party and set forth in the request; and
- (5) Copies must be simultaneously served on all other parties (listed below), and that fact must be noted on the request.

Except under the most extreme conditions, no request for postponement will be granted during the three days immediately preceding the date of hearing.

(b) (6), (b) (7)(C)

Local 1264, International Union, United
Automobile, Aerospace and Agricultural
Implement Workers of America (UAW),
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(b) (6), (b) (7)(C)

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Chloe C Schumacher, Esq.
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UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 09

AMERICAN CRAFT BREWERY LLC
D/B/A SAM ADAMS

and

Case 09-CA-281646

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS (IBT), LOCAL 1199

COMPLAINT AND
NOTICE OF HEARING

This Complaint and Notice of Hearing is based on a charge filed by the International Brotherhood of Teamsters (IBT), Local 1199 (Union). It is issued pursuant to Section 10(b) of the National Labor Relations Act (the Act), 29 U.S.C. § 151 et seq., and Section 102.15 of the Rules and Regulations of the National Labor Relations Board (the Board) and alleges that American Craft Brewery, LLC d/b/a Samuel Adams (Respondent) has violated the Act as described below.

1. The charge in this proceeding was filed by the Union on August 19, 2021, and a copy was served on Respondent by U.S. mail on August 20, 2021.

2. (a) At all material times, Respondent, has been a limited liability company with an office and place of business in Cincinnati, Ohio, (Respondent's facility), and has been engaged in brewing and packaging of alcoholic products.


(b) In conducting its operations annually, Respondent sold and shipped from its Cincinnati, Ohio facility goods valued in excess of \$50,000 directly to points outside the State of Ohio.

(c) At all material times, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

3. At all material times, the Union has been a labor organization within the meaning of Section 2(5) of the Act.

4. At all material times, the following individuals held the positions set forth opposite their names and have been supervisors of Respondent within the meaning of Section 2(11) of the Act and agents of Respondent within the meaning of Section 2(13) of the Act:

(b) (6), (b) (7)(C)

A large black rectangular redaction box covers the names and positions of the individuals mentioned in paragraph 4.

5. (a) Since about February 20, 2021, Respondent has maintained a policy excluding “bargaining unit employees” at Respondent’s facility from its bonus referral program, thereby granting preference in terms and conditions of employment only to its employees who maintained unrepresented status by conditioning eligibility for its bonus referral program on such status.

(b) The conduct described above in paragraph 5(a) is inherently destructive of the rights guaranteed employees by Section 7 of the Act.

6. By the conduct described above in paragraph 5, Respondent has been interfering with, restraining, and coercing employees in the exercise of their rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

7. By the conduct described above in paragraph 5, Respondent has been discriminating in regard to the hire or tenure or terms and conditions of employment of its employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(1) and (3) of the Act.

8. The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

ANSWER REQUIREMENT

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the complaint. The answer must be **received by this office on or before November 8, 2022 or postmarked on or before November 7, 2022.** Respondent also must serve a copy of the answer on each of the other parties.

The answer must be filed electronically through the Agency's website. To file electronically, go to www.nlr.gov, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. Responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature continue to be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing. Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed, or if

an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the complaint are true.

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT on **January 10, 2023, 9 a.m. at Room 3-111, John Weld Peck Federal Building, 550 Main Street, Cincinnati, Ohio**, and on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

Dated: October 25, 2022

A handwritten signature in black ink, appearing to read "MT Denholm".

Matthew T. Denholm, Regional Director
Region 9, National Labor Relations Board
Room 3-111, John Weld Peck Federal Building
550 Main Street
Cincinnati, OH 45202-3271

Attachments

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
NOTICE

Case 09-CA-281646

The issuance of the notice of formal hearing in this case does not mean that the matter cannot be disposed of by agreement of the parties. On the contrary, it is the policy of this office to encourage voluntary adjustments. The examiner or attorney assigned to the case will be pleased to receive and to act promptly upon your suggestions or comments to this end.

An agreement between the parties, approved by the Regional Director, would serve to cancel the hearing. However, unless otherwise specifically ordered, the hearing will be held at the date, hour, and place indicated. Postponements ***will not be granted*** unless good and sufficient grounds are shown ***and*** the following requirements are met:

- (1) The request must be in writing. An original and two copies must be filed with the Regional Director when appropriate under 29 CFR 102.16(a) or with the Division of Judges when appropriate under 29 CFR 102.16(b).
- (2) Grounds must be set forth in ***detail***;
- (3) Alternative dates for any rescheduled hearing must be given;
- (4) The positions of all other parties must be ascertained in advance by the requesting party and set forth in the request; and
- (5) Copies must be simultaneously served on all other parties (listed below), and that fact must be noted on the request.

Except under the most extreme conditions, no request for postponement will be granted during the three days immediately preceding the date of hearing.

(b) (6), (b) (7)(C)

American Craft Brewery d/b/a Samuel Adams
1625 Central Parkway
Cincinnati, OH 45214

(b) (6), (b) (7)(C)

425 Walnut Street, Suite 1800
Cincinnati, OH 45202

(b) (6), (b) (7)(C)

International Brotherhood of Teamsters (IBT)
Local Union 1199
2110 Dale Rd
Cincinnati, OH 45212-1119

Procedures in NLRB Unfair Labor Practice Hearings

The attached complaint has scheduled a hearing that will be conducted by an administrative law judge (ALJ) of the National Labor Relations Board who will be an independent, impartial finder of facts and applicable law. **You may be represented at this hearing by an attorney or other representative.** If you are not currently represented by an attorney, and wish to have one represent you at the hearing, you should make such arrangements as soon as possible. A more complete description of the hearing process and the ALJ's role may be found at Sections 102.34, 102.35, and 102.45 of the Board's Rules and Regulations. The Board's Rules and regulations are available at the following link: www.nlr.gov/sites/default/files/attachments/basic-page/node-1717/rules_and_regs_part_102.pdf.

The NLRB allows you to file certain documents electronically and you are encouraged to do so because it ensures that your government resources are used efficiently. To e-file go to the NLRB's website at www.nlr.gov, click on "e-file documents," enter the 10-digit case number on the complaint (the first number if there is more than one), and follow the prompts. You will receive a confirmation number and an e-mail notification that the documents were successfully filed.

Although this matter is set for trial, this does not mean that this matter cannot be resolved through a settlement agreement. The NLRB recognizes that adjustments or settlements consistent with the policies of the National Labor Relations Act reduce government expenditures and promote amity in labor relations and encourages the parties to engage in settlement efforts.

I. BEFORE THE HEARING

The rules pertaining to the Board's pre-hearing procedures, including rules concerning filing an answer, requesting a postponement, filing other motions, and obtaining subpoenas to compel the attendance of witnesses and production of documents from other parties, may be found at Sections 102.20 through 102.32 of the Board's Rules and Regulations. In addition, you should be aware of the following:

- **Special Needs:** If you or any of the witnesses you wish to have testify at the hearing have special needs and require auxiliary aids to participate in the hearing, you should notify the Regional Director as soon as possible and request the necessary assistance. Assistance will be provided to persons who have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.603.
- **Pre-hearing Conference:** One or more weeks before the hearing, the ALJ may conduct a telephonic prehearing conference with the parties. During the conference, the ALJ will explore whether the case may be settled, discuss the issues to be litigated and any logistical issues related to the hearing, and attempt to resolve or narrow outstanding issues, such as disputes relating to subpoenaed witnesses and documents. This conference is usually not recorded, but during the hearing the ALJ or the parties sometimes refer to discussions at the pre-hearing conference. You do not have to wait until the prehearing conference to meet with the other parties to discuss settling this case or any other issues.

II. DURING THE HEARING

The rules pertaining to the Board's hearing procedures are found at Sections 102.34 through 102.43 of the Board's Rules and Regulations. Please note in particular the following:

- **Witnesses and Evidence:** At the hearing, you will have the right to call, examine, and cross-examine witnesses and to introduce into the record documents and other evidence.

- **Exhibits:** Each exhibit offered in evidence must be provided in duplicate to the court reporter and a copy of each of each exhibit should be supplied to the ALJ and each party when the exhibit is offered in evidence. If a copy of any exhibit is not available when the original is received, it will be the responsibility of the party offering such exhibit to submit the copy to the ALJ before the close of hearing. If a copy is not submitted, and the filing has not been waived by the ALJ, any ruling receiving the exhibit may be rescinded and the exhibit rejected.
- **Transcripts:** An official court reporter will make the only official transcript of the proceedings, and all citations in briefs and arguments must refer to the official record. The Board will not certify any transcript other than the official transcript for use in any court litigation. Proposed corrections of the transcript should be submitted, either by way of stipulation or motion, to the ALJ for approval. Everything said at the hearing while the hearing is in session will be recorded by the official reporter unless the ALJ specifically directs off-the-record discussion. If any party wishes to make off-the-record statements, a request to go off the record should be directed to the ALJ.
- **Oral Argument:** You are entitled, on request, to a reasonable period of time at the close of the hearing for oral argument, which shall be included in the transcript of the hearing. Alternatively, the ALJ may ask for oral argument if, at the close of the hearing, if it is believed that such argument would be beneficial to the understanding of the contentions of the parties and the factual issues involved.
- **Date for Filing Post-Hearing Brief:** Before the hearing closes, you may request to file a written brief or proposed findings and conclusions, or both, with the ALJ. The ALJ has the discretion to grant this request and to will set a deadline for filing, up to 35 days.

III. AFTER THE HEARING

The Rules pertaining to filing post-hearing briefs and the procedures after the ALJ issues a decision are found at Sections 102.42 through 102.48 of the Board's Rules and Regulations. Please note in particular the following:

- **Extension of Time for Filing Brief with the ALJ:** If you need an extension of time to file a post-hearing brief, you must follow Section 102.42 of the Board's Rules and Regulations, which requires you to file a request with the appropriate chief or associate chief administrative law judge, depending on where the trial occurred. You must immediately serve a copy of any request for an extension of time on all other parties and furnish proof of that service with your request. You are encouraged to seek the agreement of the other parties and state their positions in your request.
- **ALJ's Decision:** In due course, the ALJ will prepare and file with the Board a decision in this matter. Upon receipt of this decision, the Board will enter an order transferring the case to the Board and specifying when exceptions are due to the ALJ's decision. The Board will serve copies of that order and the ALJ's decision on all parties.
- **Exceptions to the ALJ's Decision:** The procedure to be followed with respect to appealing all or any part of the ALJ's decision (by filing exceptions with the Board), submitting briefs, requests for oral argument before the Board, and related matters is set forth in the Board's Rules and Regulations, particularly in Section 102.46 and following sections. A summary of the more pertinent of these provisions will be provided to the parties with the order transferring the matter to the Board.

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 19**

PETER PAN SEAFOOD COMPANY, LLC

and

Case 19-CA-278769

**INTERNATIONAL ASSOCIATION OF
MACHINISTS AND AEROSPACE WORKERS,
AFL-CIO, DISTRICT LODGE NO. 160**

COMPLAINT AND NOTICE OF HEARING

This Complaint and Notice of Hearing is based on a charge filed by IAM District Lodge No. 160, whose correct name is International Association of Machinists and Aerospace Workers, AFL-CIO, District Lodge No. 160 ("Union"). It is issued pursuant to § 10(b) of the National Labor Relations Act (the "Act"), 29 U.S.C. § 151 *et seq.*, and § 102.15 of the Rules and Regulations of the National Labor Relations Board (the "Board"), and alleges that Peter Pan Seafood Co., LLC, whose correct name is Peter Pan Seafood Company, LLC ("Respondent"), has violated the Act as described below.

1.

The charge in this proceeding was filed by the Union on June 21, 2021, and a copy was served on Respondent by U.S. mail on the same date.

2.

(a) At all material times since about December 31, 2020, Respondent has been an Alaska limited liability company with its corporate headquarters in Bellevue, Washington, and facilities in King Cove, Dillingham, Port Moller, and Valdez, Alaska, and

has been engaged in the business of commercial fish and seafood fishing, processing, packaging, sales, and distribution.

(b) In conducting its operations described above in paragraph 2(a) during the 12-month period ending June 21, 2022, which is representative of all material times, Respondent derived gross revenues in excess of \$500,000.

(c) In conducting its operations described above in paragraph 2(a) during the 12-month period ending June 21, 2022, which is representative of all material times, Respondent purchased and received at its King Cove, Alaska facility goods valued in excess of \$50,000 directly from points located outside the State of Alaska.

(d) At all material times, Respondent has been an employer engaged in commerce within the meaning of § 2(2), (6), and (7) of the Act.

3.

At all material times, the Union has been a labor organization within the meaning of § 2(5) of the Act.

4.

(a) On or about December 31, 2020, Respondent purchased the assets and facilities of Peter Pan Seafoods, Inc. ("Old Peter Pan"), and since then has continued to operate the business of Old Peter Pan in basically unchanged form, and ultimately employed as a majority of its employees individuals who were previously employees of Old Peter Pan.

(b) Since on or about April 8, 2021, Respondent hired and achieved a substantial and representative complement of machinist and mechanic employees, a

majority of whom had been represented by the Union when those employees were previously employed by Old Peter Pan.

(c) Based on its operations described above in paragraphs 4(a) and 4(b), Respondent has continued the employing entity and is a successor to Old Peter Pan.

5.

(a) The following employees of Respondent (the "Unit") constitute a unit appropriate for the purposes of collective bargaining within the meaning of § 9(b) of the Act:

All full-time and regular part-time machinist and mechanic employees, including Maintenance Mechanics, Maintenance Mechanic Trainees, Facility Maintenance Mechanics, Assistant Reference Tech Mechanics, and First Machinists, employed at Respondent's facilities located in King Cove, Dillingham, Valdez, and Port Moller, Alaska, but excluding all supervisors and guards as defined in the Act.

(b) From at least approximately 1990 until about December 31, 2020, the Union had been the exclusive collective-bargaining representative of the Unit employed by Old Peter Pan, and recognized as such representative by Old Peter Pan. This recognition was embodied in successive collective-bargaining agreements, the most recent of which was effective from March 1, 2018, to February 28, 2021.

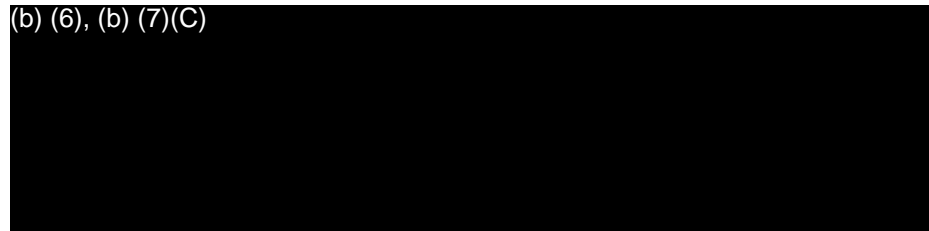
(c) From at least about 1990 until about December 31, 2020, based on § 9(a) of the Act, the Union had been the exclusive collective-bargaining representative of the Unit employed by Old Peter Pan.

(d) Since about April 8, 2021, based on the facts described above in paragraphs 4 and 5(a) through 5(c), and based on § 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of Respondent's Unit employees.

6.

(a) At all material times, the following individuals have held the positions set forth opposite their respective names and have been supervisors within the meaning of § 2(11) of the Act and/or agents within the meaning of § 2(13) of the Act, acting on behalf of Respondent:

(b) (6), (b) (7)(C)

A large black rectangular redaction box covering the names and identifying information of the individuals listed in paragraph 6(a).

Unnamed Attorney - Legal Representative

(b) At all times from about (b) (6), (b) (7)(C), until about (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) served as (b) (6), (b) (7)(C) for and on behalf of Respondent, and has been an agent of Respondent within the meaning of § 2(13) of the Act.

7.

(a) Beginning on or about December 31, 2020, and on a continuing basis until it had completed hiring its full complement of employees working in Unit positions, Respondent set the initial terms and conditions of employment for the Unit, including but not limited to wages, health insurance, and pension or retirement plans.

(b) The subjects set forth above in paragraph 7(a) relate to the wages, hours, and other terms and conditions of employment of the Unit and are mandatory subjects for the purposes of collective bargaining.

(c) Respondent engaged in the conduct described above in paragraph 7(a) without prior notice to the Union and without affording the Union an opportunity to bargain with Respondent with respect to this conduct.

8.

(a) From on or about December 31, 2020, until at least on or about May 14, 2021, Respondent planned and engaged in a course of conduct designed to ensure that only a minority of the statutory employees in a substantive and representative complement of the Unit workforce would be comprised of former Old Peter Pan Unit employees ("Respondent's plan"), in an attempt to evade its statutory obligation to recognize and bargain with the Union.

(b) In furtherance of Respondent's plan described above in paragraph 8(a), Respondent hired a number of individuals, a majority of whom had previously been represented by the Union at Old Peter Pan, to perform mechanic and machinist duties for Respondent, but classified those employees as § 2(11) statutory supervisors.

(c) Some or all of the employees described above in paragraph 8(b) did not possess sufficient indicia and responsibilities of § 2(11) supervisors to qualify as § 2(11) supervisors under the Act.

(d) Respondent engaged in the conduct described above in paragraphs 8(b) and 8(c) in furtherance of Respondent's plan, and in order to claim those re-hired employees were not statutory employees who counted towards the representative and substantial complement for the Unit.

(e) Respondent achieved a substantial and representative complement of employees in the Unit on or about April 8, 2021, but, in furtherance of Respondent's plan, relied on its misclassification of the employees described above in paragraphs 8(b) through 8(d) in order to claim that only a minority of Unit employees had been represented by the Union at Old Peter Pan.

(f) Since about April 8, 2021, based on the conduct described above in paragraphs 7 and 8(a) through 8(e), and in furtherance of Respondent's plan, Respondent has failed and refused to recognize and bargain with the Union as the exclusive collective-bargaining representative of the Unit.

(g) Based on Respondent's plan as described above in paragraph 8(a), and its conduct as described in paragraphs 8(b) through 8(f), Respondent forfeited its rights as a successor to unilaterally set and implement initial terms and conditions of employment for the Unit as described above in paragraph 7.

9.

(a) On or about January 15, 2021, the Union, by email and mail, made a written demand that Respondent recognize it as the exclusive collective-bargaining representative of the Unit and bargain collectively with the Union over wages, hours, and other terms and conditions of employment of the Unit.

(b) On or about February 2, 2021, Respondent, by its legal representative, denied that Respondent had hired a representative complement of "pertinent" employees, and denied that a majority of the current hires had previously been employed by Old Peter Pan in positions represented by the Union.

(c) On or about April 26, 2021, the Union, by email and mail, made another written demand that Respondent recognize it as the exclusive collective-bargaining representative of the Unit and bargain collectively with the Union over wages, hours, and other terms and conditions of employment of the Unit.

(d) On or about May 14, 2021, Respondent, by its legal representative, refused Respondent's demands for recognition.

(e) On or about May 14, 2021, Respondent, by its legal representative, denied it had a successorship bargaining obligation toward the Union.

(f) On or about May 14, 2021, Respondent, by its legal representative, denied that a majority of the employees hired by Respondent into Unit positions were employees who were previously represented by the Union at Old Peter Pan.

(g) Since about April 8, 2021, and on ongoing basis, based on the conduct described above in paragraphs 7, 8, and 9(a) through 9(f), and in furtherance of Respondent's plan, Respondent has failed and refused to recognize and bargain with the Union as the exclusive collective-bargaining representative of the Unit.

10.

(a) On or about April 26, 2021, the Union, by email and mail, made a written request for the roster of employees hired for the 2021 season in Unit positions, or who completed any of the work performed by Unit positions, for Respondent's Port Moller, King Cove, Valdez, and Dillingham locations.

(b) The information requested by the Union, as described above in paragraph 10(a), is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the Unit.

(c) Since on or about April 26, 2021, Respondent has failed and refused to furnish the Union with the information it requested as described above in paragraph 10(a).

11.

(a) In the alternative, even in the absence of any unlawful plan as described above in paragraph 8, based on Respondent's operations as described above in

paragraphs 4, 5, 7, 8, and 9, Respondent has continued the employing entity and is a successor to Old Peter Pan since about April 8, 2021.

(b) In the alternative, even in the absence of any unlawful plan as described above in paragraph 8, Respondent has failed and refused to recognize and bargain with the Union as the exclusive collective-bargaining representative of the Unit since about April 8, 2021.

(c) In the alternative, even in the absence of any unlawful plan as described above in paragraph 8, Respondent, by its actions in paragraphs 8(b) and 8(c), misclassified employees and deprived them of their right to be represented by the Union, to be included in the Unit, and to receive statutory protections under § 7 of the Act.

12.

By the conduct described above in paragraphs 8(b) 8(c), and 11(c), Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in § 7 of the Act in violation of § 8(a)(1) of the Act

13.

By the conduct described above in paragraphs 7 through 11, Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees in violation of §§ 8(a)(1) and (5) of the Act.

14.

The unfair labor practices of Respondent described above affect commerce within the meaning of §§ 2(6) and (7) of the Act.

WHEREFORE, as part of the remedy for the unfair labor practices alleged above, the General Counsel seeks an Order requiring that at a meeting or meetings scheduled to ensure the widest possible attendance, Respondent's representative (b) (6), (b) (7)(C) read the Notice to the Employees in English, in person or by videoconference, on worktime in the presence of a Board agent who will appear by videoconference. Alternatively, the General Counsel seeks an order requiring that Respondent promptly have a Board agent read the Notice to Employees, by videoconference, during worktime in the videoconference or in-person presence of Respondent's supervisors and agents identified above in paragraph 6.

WHEREFORE, as part of the remedy for the unfair labor practices alleged above, the General Counsel further seeks an Order requiring that Respondent, upon request by the Union, rescind any specific changes in employees' terms and conditions of employment that were implemented for Unit employees and, to the extent any of those changes caused consequential damages to Unit employees, they be made whole.

WHEREFORE, as part of the remedy for the unfair labor practices alleged above, the General Counsel further seeks an Order requiring that Respondent pay back contributions to the benefits and trust funds that are specified in the Collective Bargaining Agreement described above in paragraph 5(b), on behalf of all Unit employees employed by Respondent since January 1, 2021, and further including all contractually applicable penalties for non-payment, in addition to all statutory or contractual interest that has accrued for such owed payments.

WHEREFORE, as part of the remedy for the unfair labor practices alleged above, the General Counsel further seeks an Order requiring Respondent to: (1) bargain upon request within 15 days of a Board Order; (2) bargain upon request for a minimum of 15

hours per week until an agreement or lawful impasse is reached or until the parties agree to a respite in bargaining; (3) prepare written bargaining progress reports every 15 days and submit them to the Regional Director and also serve the reports on the Union to provide the Union with an opportunity to reply; and (4) make whole employee negotiators for any earnings lost while attending bargaining sessions.

The General Counsel further seeks all other relief as may be just and proper to remedy the unfair labor practices alleged.

ANSWER REQUIREMENT

Respondent is notified that, pursuant to §§ 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the Complaint. The answer must be **received by this office on or before November 18, 2022**. Respondent also must serve a copy of the answer on each of the other parties.

The answer must be filed electronically through the Agency's website. To file electronically, go to www.nlr.gov, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented.

See § 102.21. If the electronic version of an answer is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the regional office. However, if the electronic version of an answer to a Complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature continue to be submitted to the regional office by traditional means within three (3) business days after the date of electronic filing. Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed, or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the Complaint are true.

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT, beginning at 9 a.m. on the **7th day of March, 2023**, **at a location to be determined in Alaska or via the Zoom Videoconference platform**, and on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this Complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

Dated at Seattle, Washington, this 4th day of November, 2022.



Ronald K. Hooks, Regional Director
National Labor Relations Board, Region 19
915 2nd Ave., Ste. 2948
Seattle, WA 98174

Attachments

Procedures in NLRB Unfair Labor Practice Hearings

The attached complaint has scheduled a hearing that will be conducted by an administrative law judge (ALJ) of the National Labor Relations Board who will be an independent, impartial finder of facts and applicable law. **You may be represented at this hearing by an attorney or other representative.** If you are not currently represented by an attorney, and wish to have one represent you at the hearing, you should make such arrangements as soon as possible. A more complete description of the hearing process and the ALJ's role may be found at Sections 102.34, 102.35, and 102.45 of the Board's Rules and Regulations. The Board's Rules and regulations are available at the following link: www.nlrb.gov/sites/default/files/attachments/basic-page/node-1717/rules_and_regs_part_102.pdf.

The NLRB allows you to file certain documents electronically and you are encouraged to do so because it ensures that your government resources are used efficiently. To e-file go to the NLRB's website at www.nlrb.gov, click on "e-file documents," enter the 10-digit case number on the complaint (the first number if there is more than one), and follow the prompts. You will receive a confirmation number and an e-mail notification that the documents were successfully filed.

Although this matter is set for trial, this does not mean that this matter cannot be resolved through a settlement agreement. The NLRB recognizes that adjustments or settlements consistent with the policies of the National Labor Relations Act reduce government expenditures and promote amity in labor relations and encourages the parties to engage in settlement efforts.

I. BEFORE THE HEARING

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- **Pre-hearing Conference:** One or more weeks before the hearing, the ALJ may conduct a telephonic prehearing conference with the parties. During the conference, the ALJ will explore whether the case may be settled, discuss the issues to be litigated and any logistical issues related to the hearing, and attempt to resolve or narrow outstanding issues, such as disputes relating to subpoenaed witnesses and documents. This conference is usually not recorded, but during the hearing the ALJ or the parties sometimes refer to discussions at the pre-hearing conference. You do not have to wait until the prehearing conference to meet with the other parties to discuss settling this case or any other issues.

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The rules pertaining to the Board's hearing procedures are found at Sections 102.34 through 102.43 of the Board's Rules and Regulations. Please note in particular the following:

- **Witnesses and Evidence:** At the hearing, you will have the right to call, examine, and cross-examine witnesses and to introduce into the record documents and other evidence.
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submitted, and the filing has not been waived by the ALJ, any ruling receiving the exhibit may be rescinded and the exhibit rejected.

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III. AFTER THE HEARING

The Rules pertaining to filing post-hearing briefs and the procedures after the ALJ issues a decision are found at Sections 102.42 through 102.48 of the Board's Rules and Regulations. Please note in particular the following:

- **Extension of Time for Filing Brief with the ALJ:** If you need an extension of time to file a post-hearing brief, you must follow Section 102.42 of the Board's Rules and Regulations, which requires you to file a request with the appropriate chief or associate chief administrative law judge, depending on where the trial occurred. You must immediately serve a copy of any request for an extension of time on all other parties and furnish proof of that service with your request. You are encouraged to seek the agreement of the other parties and state their positions in your request.
- **ALJ's Decision:** In due course, the ALJ will prepare and file with the Board a decision in this matter. Upon receipt of this decision, the Board will enter an order transferring the case to the Board and specifying when exceptions are due to the ALJ's decision. The Board will serve copies of that order and the ALJ's decision on all parties.
- **Exceptions to the ALJ's Decision:** The procedure to be followed with respect to appealing all or any part of the ALJ's decision (by filing exceptions with the Board), submitting briefs, requests for oral argument before the Board, and related matters is set forth in the Board's Rules and Regulations, particularly in Section 102.46 and following sections. A summary of the more pertinent of these provisions will be provided to the parties with the order transferring the matter to the Board.

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
NOTICE

Case 19-CA-278769

The issuance of the notice of formal hearing in this case does not mean that the matter cannot be disposed of by agreement of the parties. On the contrary, it is the policy of this office to encourage voluntary adjustments. The examiner or attorney assigned to the case will be pleased to receive and to act promptly upon your suggestions or comments to this end.

An agreement between the parties, approved by the Regional Director, would serve to cancel the hearing. However, unless otherwise specifically ordered, the hearing will be held at the date, hour, and place indicated. Postponements ***will not be granted*** unless good and sufficient grounds are shown ***and*** the following requirements are met:

- (1) The request must be in writing. An original and two copies must be filed with the Regional Director when appropriate under 29 CFR 102.16(a) or with the Division of Judges when appropriate under 29 CFR 102.16(b).
- (2) Grounds must be set forth in ***detail***;
- (3) Alternative dates for any rescheduled hearing must be given;
- (4) The positions of all other parties must be ascertained in advance by the requesting party and set forth in the request; and
- (5) Copies must be simultaneously served on all other parties (listed below), and that fact must be noted on the request.

Except under the most extreme conditions, no request for postponement will be granted during the three days immediately preceding the date of hearing.

E-Service

(b) (6), (b) (7)(C)

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**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 28**

PRO RESIDENTIAL SERVICES, INC.

and

GILBERT CUHEN, an Individual

**Cases 28-CA-239775
28-CA-245265
28-CA-273854**

**ORDER FURTHER CONSOLIDATING CASES, SECOND
CONSOLIDATED COMPLAINT, AND NOTICE OF HEARING**

On April 30, 2020, a Consolidated Complaint and Notice of Hearing issued in Cases 28-CA-239775 and 28-CA-245265 alleging that Pro Residential Services, Inc. (Respondent) had engaged in unfair labor practices that violate the National Labor Relations Act (the Act), 29 U.S.C. § 151 et seq. Pursuant to Section 102.33 of the Rules and Regulations of the National Labor Relations Board (the Board) and to avoid unnecessary costs or delay, **IT IS ORDERED THAT** those cases are further consolidated with Case 28-CA-273854, filed by Gilbert Cuhen, an Individual (Cuhén), which alleges that Respondent has engaged in further unfair labor practices within the meaning of the Act.

This Second Consolidated Complaint and Notice of Hearing, issued pursuant to Section 10(b) of the Act and Section 102.15 of the Board's Rules and Regulations, is based on these consolidated cases and alleges that Respondent has violated the Act as described below.

1. (a) The charge in Case 28-CA-239775 was filed by Cuhen on April 15, 2019, and a copy was served on Respondent by U.S. mail on April 17, 2019.
- (b) The charge in Case 28-CA-245265 was filed by Cuhen on July 22, 2019, and a copy was served on Respondent by U.S. mail on that same date.

(c) The charge in Case 28-CA-273854 was filed by Cuhen on March 9, 2021, and a copy was served on Respondent by U.S. mail on March 10, 2021.

2. (a) At all material times, Respondent has been a corporation with offices and places of business in Tucson, Arizona (Respondent's facilities), and has been engaged in the business of managing and renting apartments, including a complex known as The Quails Apartments.

(b) In conducting its operations during the 12-month period ending April 15, 2019, Respondent derived gross revenues in excess of \$500,000.

(c) During the period of time described above in paragraph 2(b), Respondent purchased and received at Respondent's facilities products, goods, and materials in excess of \$5,000 directly from points outside the State of Arizona.

(d) At all material times, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7), of the Act.

3. At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondent within the meaning of Section 2(11) of the Act and agents of Respondent within the meaning of Section 2(13) of the Act:

Pratik Jogani	-	President
Nora Medrano	-	Regional Manager
Dominga Gonzalez	-	Property Manager
Sonny Jogani	-	Manager
Richard Mendoza	-	Property Manager
Juan Hermosillo	-	Maintenance Lead
Jag Patel	-	Human Resource Manager
Angelica Medina	-	Senior Manager

4. (a) From about early April 2019, a more precise date being unknown to the General Counsel but well known to Respondent, to about May 2, 2019, Respondent's employee Cuhen engaged in concerted activities with other employees for the purposes of mutual aid and protection, by, among other things, discussing wages and raising concerted complaints about a supervisor's conduct in the workplace.

(b) Since about September 9, 2020, Respondent has maintained the following overly-broad and discriminatory rules in its Employee Handbook:

(1) PERSONNEL RECORDS (Page 8)

[. . .] All personnel records and information are the property of the Company which reserves the right to use and disclose this information in accordance with State and Federal regulations and as is necessary in the general course of business.

(2) OPEN-DOOR POLICY (Page 10)

Suggestions for improving the Company are always welcome. At some time, you may have a complaint, suggestion or question about your job, your working conditions or the treatment you are receiving. Your good-faith complaints, questions and suggestions also are of concern to the Company. We ask that you take your concerns to your immediate supervisor. [. . .]

(3) OFF-DUTY CONDUCT/OUTSIDE EMPLOYMENT (Page 11)

[. . .]

Employees are expected to conduct their personal affairs in a manner that does not adversely affect the Company's or their own integrity, reputation or credibility. Illegal or immoral off-duty conduct on the part of an employee that adversely affects the Company's legitimate business interests or the employee's ability to perform his or her job will not be tolerated.

While employed by the Company, employees are expected to devote their energies to their jobs with the Company. For this reason, second jobs for full-time employees are strongly discouraged. The following types of outside employment are strictly prohibited:

[. . .]

2. Employment that creates a conflict of interest or is incompatible with the employee's employment with the Company.

[. . .]

4. Employment that requires the employee to conduct work or related activities on the Company's property during the Company's working hours or using the Company's facilities and/or equipment.

[. . .]

Employees who wish to engage in outside employment that may create a real or apparent conflict of interest must submit a written request to the Company explaining the details of the outside employment. [. . .]

(4) PROHIBITED CONDUCT (Pages 11-12)

The following conduct is prohibited and will not be tolerated by the Company. This list of prohibited conduct is illustrative only; other types of conduct injurious to security, personal safety, employee welfare and the Company's operations also may be prohibited. [. . .]

[. . .]

5. Unauthorized use of Company/client equipment, time, materials, or facilities.

[. . .]

13. Failure to obtain permission to leave work for any reason during normal working hours.

15. Causing, creating or participating in a disruption of any kind during working hours on Company/client property. ...

20. Wearing extreme, unprofessional or inappropriate styles of dress or hair while working.

21. Violation of *any* safety, health, security, or Company/client policies, rules or procedures. (emphasis supplied).

(5) INFORMATION TECHNOLOGY (Page 15)

Employees of the Company are required to take all reasonable measures to safeguard and protect all records, computer equipment and computer generated information and to use the records, equipment and data only for company business. [. . .]

(6) PERSONAL USE OF TELEPHONES,
EQUIPMENT AND SUPPLIES (Page 15)

Company and client telephones, copiers, postage equipment, and office supplies and the like, are for business use and should not be used for personal matters. While it is recognized that you may occasionally need to use Company materials for personal use (i.e., a necessary personal call, copying a tax return), keep in mind that our policy discourages personal use, and the recognized need for occasional use should not be abused. [. . .]

(7) SOLICITATION (Page 16)

In order to ensure efficient operation of the Company's business and to prevent annoyance to employees, it is necessary to control solicitations and distribution of literature and/or merchandise on Company property. Employees assigned to a client's property shall not solicit on the property. [. . .]

(c) Since about September 9, 2020, Respondent has maintained the following overly-broad and discriminatory rules in its Employee Agreement:

(1) Employee Administrative Manual (Page 2)

As part of your training and continuing education program with PRO RESIDENTIAL SERVICES we may provide you with a comprehensive Administrative Manual or other training materials. This manual or materials is an adjunct to your employment agreement and the policies and procedures therein are to be considered part of your job description.

The Administrative Manual or materials is the property of PRO RESIDENTIAL SERVICES and should not be copied or shared with any non-employees. [. . .]

(2) Personal Preferences: (Page 3)

PRO RESIDENTIAL SERVICES respects the rights of its employees to maintain preferences with regard to religion, politics and social issues. However it is company policy that these personal preferences not be shared with or in anyway imposed upon the residents of the apartment community being managed or maintained by the employee. This includes signs, literature or artifacts displayed in any manner by the employee, or specific discussion regarding these preferences with the residents.

(d) Since about October 17, 2018, Respondent has maintained an overly-broad and discriminatory rule prohibiting its employees from discussing their wages with other employees.

(e) About early to mid-April 2019, a more precise date being unknown to the General Counsel but well known to Respondent, Respondent, by Nora Medrano (Medrano), at The Quails Apartments:

(1) enforced the rule described above in paragraph 4(d) by reminding its employees not to discuss their wages; and

(2) prohibited its employees from discussing their wages.

(f) About May 2, 2019, Respondent, by Medrano, via telephone, threatened its employees with discharge because they filed charges and/or provided testimony to the Board.

(g) About May 2, 2019, Respondent discharged its employee Cuhen.

(h) Respondent engaged in the conduct described above in paragraph 4(g), because Cuhen engaged in the conduct described above in paragraph 4(a), and to discourage employees from engaging in these or other concerted activities.

5. Respondent engaged in the conduct described above in paragraph 4(g) because Cuhen filed a charge in Case 28-CA-239775.

6. By the conduct described above in paragraph 4, Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

7. By the conduct described above in paragraphs 4(g) and 5, Respondent has been discriminating against employees for filing charges or giving testimony under the Act in violation of Section 8(a)(1) and (4) of the Act.

8. The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

In order to fully remedy the unfair labor practices set forth above, the General Counsel seeks an Order providing for all relief as may be just and proper to remedy the unfair labor practices alleged, including, but not limited to, requirements that Respondent:

(a) distribute the Notice to Employees to all of its employees by text messaging and by posting on social media websites and on any internal apps used by Respondent to communicate with its employees;

(b) as part of the remedy for the allegations in paragraphs 4(b) and 4(c), rescind the rules quoted in paragraphs 4(b) and 4(c); advise the employees in writing that the rules are no longer being maintained; post the Notice to Employees at all locations where the rules are maintained; furnish employees with inserts for Respondent's current Employee Handbook and Employment Agreement that advise that the rules have been rescinded, or publish and distribute to employees revised Employee Handbooks and Employment Agreements that do not contain the rules; and provide a copy of the inserts or revised Employee Handbooks and Employment Agreements, together with written or electronic communications to employees showing that the rules have been rescinded and are no longer being maintained, to the Region within 21 days; and

(c) as part of the remedy for the allegations in paragraphs 4(g), 4(h), and 5, make Cuhen whole, including, but not limited to, by payment for consequential economic harm (b) (6) incurred as a result of the Respondent's unlawful conduct.

The General Counsel further seeks all other relief as may be just and proper to remedy the unfair labor practices alleged.

ANSWER REQUIREMENT

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the consolidated complaint. The answer must be **received by this office on or before May 12, 2022 or postmarked on or before May 11, 2022.** Respondent also must serve a copy of the answer on each of the other parties.

The answer must be filed electronically through the Agency's website. To file electronically, go to www.nlr.gov, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. Responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature continue to be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing. Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed,

or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the consolidated complaint are true.

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT on a date to be determined, at 9:00am (local time), and on consecutive days thereafter until concluded, at a location and by a means and method to be determined, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

Dated at Phoenix, Arizona, this 28th day of April 2022.

/s/ *Cornele A. Overstreet*

Cornele A. Overstreet, Regional Director

Attachments

**UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
NOTICE**

Cases 28-CA-239775, et al.

The issuance of the notice of formal hearing in this case does not mean that the matter cannot be disposed of by agreement of the parties. On the contrary, it is the policy of this office to encourage voluntary adjustments. The examiner or attorney assigned to the case will be pleased to receive and to act promptly upon your suggestions or comments to this end.

An agreement between the parties, approved by the Regional Director, would serve to cancel the hearing. However, unless otherwise specifically ordered, the hearing will be held at the date, hour, and place indicated. Postponements ***will not be granted*** unless good and sufficient grounds are shown ***and*** the following requirements are met:

- (1) The request must be in writing. An original and two copies must be filed with the Regional Director when appropriate under 29 CFR 102.16(a) or with the Division of Judges when appropriate under 29 CFR 102.16(b).
- (2) Grounds must be set forth in ***detail***;
- (3) Alternative dates for any rescheduled hearing must be given;
- (4) The positions of all other parties must be ascertained in advance by the requesting party and set forth in the request; and
- (5) Copies must be simultaneously served on all other parties (listed below), and that fact must be noted on the request.

Except under the most extreme conditions, no request for postponement will be granted during the three days immediately preceding the date of hearing.

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Procedures in NLRB Unfair Labor Practice Hearings

The attached complaint has scheduled a hearing that will be conducted by an administrative law judge (ALJ) of the National Labor Relations Board who will be an independent, impartial finder of facts and applicable law. **You may be represented at this hearing by an attorney or other representative.** If you are not currently represented by an attorney, and wish to have one represent you at the hearing, you should make such arrangements as soon as possible. A more complete description of the hearing process and the ALJ's role may be found at Sections 102.34, 102.35, and 102.45 of the Board's Rules and Regulations. The Board's Rules and regulations are available at the following link: www.nlr.gov/sites/default/files/attachments/basic-page/node-1717/rules_and_regs_part_102.pdf.

The NLRB allows you to file certain documents electronically and you are encouraged to do so because it ensures that your government resources are used efficiently. To e-file go to the NLRB's website at www.nlr.gov, click on "e-file documents," enter the 10-digit case number on the complaint (the first number if there is more than one), and follow the prompts. You will receive a confirmation number and an e-mail notification that the documents were successfully filed.

Although this matter is set for trial, this does not mean that this matter cannot be resolved through a settlement agreement. The NLRB recognizes that adjustments or settlements consistent with the policies of the National Labor Relations Act reduce government expenditures and promote amity in labor relations and encourages the parties to engage in settlement efforts.

I. BEFORE THE HEARING

The rules pertaining to the Board's pre-hearing procedures, including rules concerning filing an answer, requesting a postponement, filing other motions, and obtaining subpoenas to compel the attendance of witnesses and production of documents from other parties, may be found at Sections 102.20 through 102.32 of the Board's Rules and Regulations. In addition, you should be aware of the following:

- **Special Needs:** If you or any of the witnesses you wish to have testify at the hearing have special needs and require auxiliary aids to participate in the hearing, you should notify the Regional Director as soon as possible and request the necessary assistance. Assistance will be provided to persons who have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.603.
- **Pre-hearing Conference:** One or more weeks before the hearing, the ALJ may conduct a telephonic prehearing conference with the parties. During the conference, the ALJ will explore whether the case may be settled, discuss the issues to be litigated and any logistical issues related to the hearing, and attempt to resolve or narrow outstanding issues, such as disputes relating to subpoenaed witnesses and documents. This conference is usually not recorded, but during the hearing the ALJ or the parties sometimes refer to discussions at the pre-hearing conference. You do not have to wait until the prehearing conference to meet with the other parties to discuss settling this case or any other issues.

II. DURING THE HEARING

The rules pertaining to the Board's hearing procedures are found at Sections 102.34 through 102.43 of the Board's Rules and Regulations. Please note in particular the following:

- **Witnesses and Evidence:** At the hearing, you will have the right to call, examine, and cross-examine witnesses and to introduce into the record documents and other evidence.
- **Exhibits:** Each exhibit offered in evidence must be provided in duplicate to the court reporter and a copy of each of each exhibit should be supplied to the ALJ and each party when the exhibit is offered in evidence. If a copy of any exhibit is not available when the original is received, it will be the responsibility of the party offering such exhibit to submit the copy to the ALJ before the close of hearing.

If a copy is not submitted, and the filing has not been waived by the ALJ, any ruling receiving the exhibit may be rescinded and the exhibit rejected.

- **Transcripts:** An official court reporter will make the only official transcript of the proceedings, and all citations in briefs and arguments must refer to the official record. The Board will not certify any transcript other than the official transcript for use in any court litigation. Proposed corrections of the transcript should be submitted, either by way of stipulation or motion, to the ALJ for approval. Everything said at the hearing while the hearing is in session will be recorded by the official reporter unless the ALJ specifically directs off-the-record discussion. If any party wishes to make off-the-record statements, a request to go off the record should be directed to the ALJ.
- **Oral Argument:** You are entitled, on request, to a reasonable period of time at the close of the hearing for oral argument, which shall be included in the transcript of the hearing. Alternatively, the ALJ may ask for oral argument if, at the close of the hearing, if it is believed that such argument would be beneficial to the understanding of the contentions of the parties and the factual issues involved.
- **Date for Filing Post-Hearing Brief:** Before the hearing closes, you may request to file a written brief or proposed findings and conclusions, or both, with the ALJ. The ALJ has the discretion to grant this request and to will set a deadline for filing, up to 35 days.

III. AFTER THE HEARING

The Rules pertaining to filing post-hearing briefs and the procedures after the ALJ issues a decision are found at Sections 102.42 through 102.48 of the Board's Rules and Regulations. Please note in particular the following:

- **Extension of Time for Filing Brief with the ALJ:** If you need an extension of time to file a post-hearing brief, you must follow Section 102.42 of the Board's Rules and Regulations, which requires you to file a request with the appropriate chief or associate chief administrative law judge, depending on where the trial occurred. You must immediately serve a copy of any request for an extension of time on all other parties and furnish proof of that service with your request. You are encouraged to seek the agreement of the other parties and state their positions in your request.
- **ALJ's Decision:** In due course, the ALJ will prepare and file with the Board a decision in this matter. Upon receipt of this decision, the Board will enter an order transferring the case to the Board and specifying when exceptions are due to the ALJ's decision. The Board will serve copies of that order and the ALJ's decision on all parties.
- **Exceptions to the ALJ's Decision:** The procedure to be followed with respect to appealing all or any part of the ALJ's decision (by filing exceptions with the Board), submitting briefs, requests for oral argument before the Board, and related matters is set forth in the Board's Rules and Regulations, particularly in Section 102.46 and following sections. A summary of the more pertinent of these provisions will be provided to the parties with the order transferring the matter to the Board.